

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

TODD CLEAVENGER, et al.,)	CASE NO.: 5:21-CV-00557
)	
Plaintiffs,)	JUDGE: BENITA Y. PEARSON
)	
vs.)	<u>BARBERTON DEFENDANTS' MOTION</u>
)	<u>TO STRIKE AMENDED/SUPPLEMENTAL</u>
CITY OF BARBERTON, et al.,)	<u>COMPLAINT OR FOR MORE DEFINITE</u>
)	<u>STATEMENT</u>
Defendants.)	

Now come Defendants, City of Barberton, William Judge, Vince Morber, Robert Russell, Brian Davis, Robert Mingle, Michael Green and Lisa Miller ("Barberton Defendants"), by and through counsel, Mazanec, Raskin and Ryder Co., L.P.A., and hereby respectfully request this Honorable Court strike Plaintiffs' Amended/Supplemental Complaint or, in the alternative, for more definite statement requiring a single pleading containing Plaintiffs' Complaint. A memorandum in support is attached and incorporated herein.

Respectfully submitted,

MAZANEC, RASKIN & RYDER CO., L.P.A.

s/Terence L. Williams

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

Plaintiff Todd Cleavenger commenced this civil action on January 29, 2021 by filing a complaint in the Summit County Court of Common Pleas. The gravamen of the original complaint centered around his alleged wrongful arrest on January 1, 2019 and subsequent prosecution.

Plaintiffs' Complaint raised vague and unsupported allegations of misconduct by the Barberton Defendants and Summit County Defendants pursuant to 42 U.S.C. § 1983, and related state law claims in connection with the January 1, 2019 incident. In light of the Plaintiffs' allegations of federal civil rights claims pursuant to 42 U.S.C. § 1983 in the Complaint, Defendants removed this action to the United States District Court for the Northern District of Ohio pursuant to 28 U.S.C. § 1441(a). After Defendants' removal, Plaintiffs filed a Motion to Amend/Supplement their Complaint in the Summit County Common Pleas Court, despite the removal to this Court. That Motion sought to add certain Defendants, several of whom are police officers of the City of Barberton.

On March 17, 2021, the Barberton Defendants filed an Answer and Motion for Judgment on the Pleadings seeking dismissal on all of Plaintiffs' claims based collateral estoppel, on the lack of sufficient factual allegations and failure to state a claim upon which relief could be granted.

Plaintiffs' Amended/Supplemental Complaint does not recite the unaltered portions of the original Complaint, but instead seeks only to include additional allegations and parties. The allegations in the Supplemental Complaint are substantially similar to those in the original Complaint insofar as they contains the same bare, nonsensical and conclusory allegations. Moreover, the addition of these additional Defendants is a futile exercise for the same reasons as laid out in the Barberton Defendants' Motion for Judgment on the Pleadings.

Therefore, the Barberton Defendants respectfully urge this Court to issue an Order striking Plaintiffs' Amended/Supplemental Complaint. Alternatively, if the amended/supplemental Complaint proceeds, the Barberton Defendants respectfully request that the Court order a more definite statement by requiring Plaintiffs to file an Amended Complaint as a single document to avoid confusion.

II. ARGUMENT

A. Amendment of Pleadings under Civ. R. 15(a)(1).

Fed. R. Civ. P. 15(a)(1) generally provides that a party may amend its pleading once as a matter of course within twenty-one days after serving it, or if a party seeks to amend a pleading that requires a responsive pleading, a party must amend the pleading within twenty-one days after the earlier of the service of a responsive pleading or motion filed under Fed. R. Civ. P. 12(b), (e), or (f). In all other instances not provided for under Fed. R. Civ. P. 15(a)(1), a party may amend its pleading only by obtaining consent of the opposing party or the court's leave, with the court freely giving leave when justice so requires. Fed. R. Civ. P. 15(a)(2). A proposed amendment is futile if it could not survive a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). *Riverview Health Institute LLC v. Med. Mut. of Ohio*, 601 F.3d 505, 512 (6th Cir.2010); *Rose v. Hartford Underwriters Ins. Co.*, 203 F.3d 417, 420 (6th Cir.2000). Similarly, even where leave is sought to amend a complaint, it may be "appropriately denied when there is a 'repeated failure to cure deficiencies by amendments previously allowed.'" *Libretti v. Woodson*, 600 Fed. Appx. 367, 373 (6th Cir.2015) quoting *Morse v. McWhorter*, 290 F.3d 795, 800 (6th Cir.2002).

Plaintiffs' amended/supplemental Complaint does not cure the deficiencies from the original Complaint. Instead, the amended/complaint suffers from the same problem as the original Complaint in that it contains legally insufficient conclusory allegations. As a result, the Barberton respectfully requests the Court strike Plaintiffs' amended/supplemental Complaint.

B. Plaintiffs' Amended/Supplemental Complaint Requires a More Definite Statement.

Alternatively, if the Court does not strike Plaintiff's amended/supplemental Complaint, the Barberton Defendants respectfully request that the Court order Plaintiffs file a single document complaint with the Federal Rules of Civil Procedure.

Rule 12(e) of the Federal Rules of Civil Procedure provides in pertinent part:

A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired. ...

Pursuant to this rule, the Barberton Defendants respectfully request a more definite statement of the Plaintiff's amended/supplemental Complaint.

Plaintiffs' amended/supplemental Complaint solely seeks to add additional allegations against newly identified Defendants, including two additional Barberton police officers, a nurse at the hospital treating the individual whom Plaintiff abducted and two Summit County prosecutors. However, the amended/supplemental complaint does not actually include the allegations from the original Complaint, but instead seeks to incorporate the allegations by reference. If Plaintiffs' amended/supplemental Complaint is permitted to proceed as two separate documents with the original complaint and supplemental complaint, it will cause significant confusion for all involved, as well as muddying the record of this matter. As a result, if the Court permits Plaintiffs' to utilize their amended/supplemental Complaint, the Barberton Defendants request that the Court order Plaintiffs to file a single Complaint which includes the entirety of the allegations against all Defendants so as not to cloud the record or confuse all involved.

III. CONCLUSION

The Barberton Defendants respectfully request that the Court enter an Order striking Plaintiffs' Amended/Supplemental Complaint as it is futile based on the Barberton Defendants'

Motion for Judgment on the Pleadings. Alternatively, Defendants respectfully request the Court order Plaintiffs to file a single Complaint that complies with the Federal Rules of Civil Procedure.

Respectfully submitted,

MAZANEC, RASKIN & RYDER CO., L.P.A.

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Counsel for Defendants City of Barberton, William Judge, Vince Morber, Robert Russell, Brian Davis, Robert Mingle, Michael Green and Lisa Miller

CERTIFICATE OF SERVICE

I hereby certify that on March 23, 2021, a copy of the foregoing Barberton Defendants' Motion to Strike Amended/Supplemental Complaint or for More Definite Statement was filed electronically. Notice of this filing will be sent to all registered parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. A copy of the foregoing Barberton Defendants' Motion to Strike Amended/Supplemental Complaint of for More Definite Statement was also served by regular U.S. Mail to:

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TRAVR-210034/Barberton Ds MTStrike Amd/Supp Complaint